

AMENDED IN ASSEMBLY JUNE 7, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1591

Introduced by Assembly Member Ma
(Coauthors: Assembly Members De Leon, Garcia, and Mullin)

February 23, 2007

An act to amend Section 25128 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1591, as amended, Ma. The Corporation Tax Law: allocation and apportionment.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from, or attributable to, sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula, except as otherwise provided.

This bill, for taxable years beginning on or after January 1, 2007, would allow a taxpayer that is a member of the apportioning trade or business to elect, by contracting with the Franchise Tax Board, as provided, to apportion its business income to this state by utilizing one of the revised apportionment formulas, as specified.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 25128 of the Revenue and Taxation Code is amended to read:

25128. (a) Notwithstanding Section 38006, all business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, except as provided in subdivision (b) or (c).

(b) (1) If an apportioning trade or business derives more than 50 percent of its “gross business receipts” from conducting one or more qualified business activities, all business income of the apportioning trade or business shall be apportioned to this state by multiplying business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(2) For purposes of this section, a “qualified business activity” means the following:

(A) An agricultural business activity.

(B) An extractive business activity.

(C) A savings and loan activity.

(D) A banking or financial business activity.

(c) (1) Notwithstanding any other provision of law, for taxable years beginning on or after January 1, 2007, a taxpayer that is a member of an apportioning trade or business may, on behalf of the apportioning trade or business or a subgroup thereof, elect to adjust, as provided in paragraph (2), the fraction described in subdivision (a) or (b), as applicable, by utilizing one of the following alternative methods:

(A) (i) In calculating its business income apportioned to this state, the apportioning trade or business, or a subgroup thereof, may add an additional sales factor to the numerator of the fraction described in subdivision (a) or (b), whichever is applicable, and may increase the denominator of that fraction by one ~~in each taxable year~~ for each two hundred fifty million dollars (\$250,000,000) of qualified expenditures made on or after January 1, 2007.

1 (ii) The apportioning trade or business, or a subgroup thereof,
2 must submit and certify, with each tax return filed with the
3 Franchise Tax Board, a summary of the qualified expenditures.

4 (B) (i) The apportioning trade or business, or a subgroup
5 thereof, may adjust the property factor and the payroll factor used
6 in the fraction described in subdivision (a) or (b), whichever is
7 applicable, as follows:

8 ~~(I) Property, otherwise includable in the calculations of the~~
9 ~~property factor, as defined in Section 25129, shall be excluded~~
10 ~~from the numerator of that property factor if it is in excess of the~~
11 ~~value of the taxpayer's real and tangible personal property owned~~
12 ~~or rented and used in this state in the base year.~~

13 *(I) (aa) The value of real and tangible personal property*
14 *acquired or rented by the taxpayer on or after January 1, 2007,*
15 *that is in excess of the value of the taxpayer's real and tangible*
16 *personal property owned or rented and used in this state in the*
17 *base year and otherwise includable in the computations of the*
18 *property factor, as defined in Section 25129, shall be excluded*
19 *from the numerator of that property factor until the election is*
20 *terminated.*

21 *(ab) For purposes of this section, if real and tangible personal*
22 *property acquired or rented by a taxpayer in this state in a taxable*
23 *year is disposed of by the taxpayer within one year or less of the*
24 *date the property was first available for use in this state, the value*
25 *of that property shall be included in the numerator of the*
26 *taxpayer's property factor for such period.*

27 (II) (aa) The amount of compensation paid *in this state* by the
28 taxpayer, in a taxable year that is in excess of the amount of total
29 compensation paid in this state in the base year and otherwise
30 includable in the computations of the payroll factor, as defined in
31 Section 25132, shall be excluded from the numerator of that payroll
32 factor.

33 (ab) For purposes of this section, “compensation in the base
34 year” does not include extraordinary events such as deferred
35 compensation payouts or stock option exercises.

36 *(ac) For purposes of this section, sales or other transactions*
37 *between members of an apportioning trade or business shall not*
38 *be considered a qualified expenditure or new investment made in*
39 *this state.*

(ii) The apportioning trade or business, or a subgroup thereof, must submit and certify, with each tax return filed with the Franchise Tax Board, a summary of the new investment made in this state.

(2) (A) On or after January 1, 2007, a taxpayer may elect to adjust the fraction described in subdivision (a) or (b), whichever is applicable. The election shall be made by attaching a statement to the original, *timely filed* return identifying the apportioning trade or business, or a subgroup thereof, specifying the method of adjusting the apportionment factor as described in subdivision (a) or (b), and designating the member of the apportioning trade or business, or a subgroup thereof, that will be required to submit and certify the information, as required by paragraph (1).

(B) *The election may be terminated without the consent of the Franchise Tax Board after it has been in effect for at least 84 months. The termination shall be made on an original, timely filed return for the first year in which the election is to be terminated.*

~~(B) The election may be terminated either by the taxpayer, with~~
(C) *The election may be terminated before the 84-month period described in subparagraph (B) has elapsed either by the taxpayer, with the permission of the Franchise Tax Board, or by the Franchise Tax Board, if the taxpayer fails to submit a certification signed by an officer, as required by paragraph (1). The election shall remain in effect until terminated.*

(D) *The election shall remain in effect until terminated.*

~~(C)~~

(E) This subdivision shall not be construed to terminate the water's-edge election made by a taxpayer pursuant to Section 25113, nor shall it be construed to allow any change in, or adjustments to, that election.

~~(D) The Franchise Tax Board shall prescribe rules and regulations to implement the provisions of this subdivision.~~

(F) *The Franchise Tax Board may prescribe any regulations that may be necessary or appropriate to implement the provisions of this subdivision.*

(d) For purposes of this section:

(1) "Gross business receipts" means gross receipts described in subdivision (e) of Section 25120 (other than gross receipts from sales or other transactions within an apportioning trade or business between members of a group of corporations whose income and

1 apportionment factors are required to be included in a combined
2 report under Section 25101, limited, if applicable, by Section
3 25110), whether or not the receipts are excluded from the sales
4 factor by operation of Section 25137.

5 (2) “Agricultural business activity” means activities relating to
6 any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
7 plantation, ranch, nursery, or range. “Agricultural business activity”
8 also includes activities relating to cultivating the soil or raising or
9 harvesting any agricultural or horticultural commodity, including,
10 but not limited to, the raising, shearing, feeding, caring for, training,
11 or management of animals on a farm as well as the handling,
12 drying, packing, grading, or storing on a farm any agricultural or
13 horticultural commodity in its unmanufactured state, but only if
14 the owner, tenant, or operator of the farm regularly produces more
15 than one-half of the commodity so treated.

16 (3) “Extractive business activity” means activities relating to
17 the production, refining, or processing of oil, natural gas, or mineral
18 ore.

19 (4) “Savings and loan activity” means any activities performed
20 by savings and loan associations or savings banks which have been
21 chartered by federal or state law.

22 (5) “Banking or financial business activity” means activities
23 attributable to dealings in money or moneyed capital in substantial
24 competition with the business of national banks.

25 (6) “Apportioning trade or business” means a distinct trade or
26 business whose business income is required to be apportioned
27 under Sections 25101 and 25120, limited, if applicable, by Section
28 25110, using the same denominator for each of the applicable
29 payroll, property, and sales factors.

30 (7) “Base year” means the year immediately preceding the year
31 of election.

32 (8) *“Value of real and tangible personal property” means the*
33 *value of owned and rented property as described in Section 25130.*

34 (9) *“Amount of compensation” means compensation described*
35 *in Section 25132.*

36 ~~(8)~~

37 (10) (A) “Qualified expenditures” means, in whole or in part,
38 all of the following expenditures:

39 ~~(A)~~

- 1 (i) Capital expenditures for real and tangible personal property
2 located in this state.
3 ~~(B)~~
4 (ii) Expenses incurred to acquire, develop, or license intellectual
5 property in this state.
6 ~~(C)~~
7 (iii) Research and development expenses, as defined in Section
8 174 of the Internal Revenue Code, incurred in this state.
9 ~~(D)~~
10 (iv) Expenses incurred to develop, enhance, or maintain real
11 property and tangible personal property located in this state.
12 ~~(E)~~
13 (v) Capitalized rent paid in this state in excess of the prior year.
14 ~~(F)~~
15 (vi) Compensation and benefits paid to employees in this state
16 in excess of the prior year.
17 ~~(G)~~
18 (vii) Payments to independent contractors and payroll companies
19 for work performed in this state in excess of the prior year.
20 ~~(H)~~
21 (viii) Training costs incurred in this state.
22 ~~(I)~~
23 (ix) Costs incurred in providing a basic level of health care to
24 employees in this state, as defined in the Knox-Keene Act, in
25 excess of the prior year.
26 ~~(J)~~
27 (x) Expenditures incurred in connection with funding research
28 at a four-year public or private college or university located in
29 California.
30 (B) *“Qualified expenditures” does not include amounts paid to*
31 *acquire stock or other equity interests in a corporation or other*
32 *business entity.*
33 ~~(9) Paragraph (4) of subdivision (c) shall apply only if the~~
34 ~~Franchise Tax Board adopts the Proposed Multistate Tax~~
35 ~~Commission Formula for the Uniform Apportionment of Net~~
36 ~~Income from Financial Institutions, or its substantial equivalent,~~
37 ~~and shall become operative upon the same operative date as the~~
38 ~~adopted formula.~~
39 ~~(10)~~

1 (11) In any case where the income and apportionment factors
2 of two or more savings associations or corporations are required
3 to be included in a combined report under Section 25101, limited,
4 if applicable, by Section 25110, both of the following shall apply:

5 (A) The application of the more than 50 percent test of
6 subdivision (b) shall be made with respect to the “gross business
7 receipts” of the entire apportioning trade or business of the group.

8 ~~(B) The entire business income of the group shall be apportioned~~
9 ~~in accordance with either subdivision (a) or (b), as applicable.~~

10 (B) *The business income of the apportioning trade or business,*
11 *or a subgroup thereof, shall be apportioned in accordance with*
12 *subdivision (a), (b), or (c), as applicable.*

13 (e) The provisions of this section are severable. If any provision
14 of this section or its application is held invalid, that invalidity shall
15 not affect other provisions or applications that can be given effect
16 without the invalid provision or application.

17 (f) The amendments made to this section by the act adding this
18 subdivision shall apply to taxable years beginning on or after
19 January 1, 2007.

20 SEC. 2. This act provides for a tax levy within the meaning of
21 Article IV of the Constitution and shall go into immediate effect.

22 SEC. 3. It is the intent of the Legislature that Section 1 of this
23 act does not modify the sales factor, as defined in Section 25134
24 of the Revenue and Taxation Code, used in any special
25 apportionment formulas contained in the regulations promulgated
26 by the Franchise Tax Board pursuant to Section 25137 of the
27 Revenue and Taxation Code.